

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

IN RE: GENENTECH HERCEPTIN)	
(TRASTUZUMAB) MARKETING)	MDL DOCKET NO. 16-MD-2700
AND SALES PRACTICES)	ALL CASES
LITIGATION)	

**JOINT APPLICATION TO CONTINUE CASE MANAGEMENT CONFERENCE
AND EXTEND DATE FOR SUBMISSION OF PROPOSED
CASE MANAGEMENT ORDER AND AGENDA**

Plaintiffs¹ and Defendant Genentech, Inc. (the “Parties”) respectfully request that the Court continue the Case Management Conference (“CMC”) in the above-captioned matter (the “MDL”) to June 7 or 8, 2016, and that the Court continue the date, to and including May 27, 2016, within which the parties’ are to submit a proposed Case Management Order (“CMO”) and agenda to the Court. In support of this Joint Application, the Parties state as follows:

1. The Transfer Order in the MDL was entered by the United States Judicial Panel for Multidistrict Litigation on April 7, 2016. (*See* Transfer Order, Doc. No. 2).

2. On April 18, 2016, the Court set a Case Management Conference in the MDL for May 4, 2016. (*See* Practice and Procedure Order, Doc. No. 6). The Court further ordered the Parties to submit a proposed CMO and agenda to the Court on or before April 29, 2016. (*See id.*).

¹ As identified in the Transfer Order, Schedule A (Doc. No. 2).

3. Counsel for Defendant in this action, William O'Connor, is also counsel for appellee in the matter styled, *David Edens, Rhonda Edens, and Edens Structural Solutions LLC v. The Netherlands Insurance Company*, United States Court of Appeals for the Tenth Circuit, Case No. 15-5092 (the "*Edens*" case). Notice of Appeal in the *Edens* case was filed on September 28, 2015. (See *Edens* Transmittal Sheet, attached as Exhibit 1).

4. On March 4, 2016, oral argument was set in the *Edens* case for May 4, 2016 at 9:00 a.m. (See *Edens* Minute Order, attached as Exhibit 2).

5. Thus, the CMC is presently set on the same date on which Mr. O'Connor must appear for oral argument in the *Edens* case.

6. Consequently, lead local counsel for Defendant in this action has a direct conflict between the CMC setting and oral argument in the *Edens* case, as contemplated by the General Order of the Court of the Northern District of Oklahoma No. M-128-Q, September 30, 1998 (the "General Order"). In addition, national counsel for Defendant has a longstanding prior commitment on the same date that would be extremely difficult to move at this time.

7. Counsel for Defendant certifies that the matters cannot be adequately handled by another attorney within the firm, and that the clients' interests cannot be adequately protected given the conflicting settings.

8. In accordance with the General Order, in resolving scheduling conflicts, “[a]ppellate proceedings shall prevail over all trial hearings, other than actual trials.” See General Order ¶ B(4).²

9. This Motion is not brought for the purpose of delay but, rather, due to the conflict with the *Edens* oral argument set in Denver on the same date as the CMC in accordance with the availability of the Court and counsel.

10. Prior to the Court’s entry of the April 18, 2016 Practice and Procedure Order, the Parties had jointly initiated the drafting of a Joint Motion for Initial Conference. After consulting with the Court’s staff on the Court’s availability, the parties and counsel conferred and intended to propose June 7 or 8, 2016 for the CMC.

11. Due to the conflict with the Court’s May 4 setting of the CMC, and the parties’ need for additional time to confer and prepare a proposed CMO and agenda which, the parties respectfully submit, will be of material assistance to the Court, the Parties propose the following:

Submission of proposed Case Management Order and agenda	May 27
Case Management Conference	June 7 or 8

² Mr. O’Connor further certifies that he has complied with the provisions of the General Order and is unable to resolve the conflict without the assistance of the Court.

CONCLUSION

For the foregoing reasons, Plaintiffs and Defendant Genentech, Inc. respectfully request that the Court reschedule the Case Management Conference, currently set for May 4, 2016, to June 7 or 8, 2016; and that the Court extend the date, to and including May 27, 2016, within which the parties are to submit a proposed CMO and agenda. A proposed Order is being submitted concurrent with the filing of this Motion.

Respectfully submitted,

s/William W. O'Connor

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**Signed by filing attorney with permission of Plaintiffs' attorney.*